

**DISTRICT OF COLUMBIA  
DOH OFFICE OF ADJUDICATION AND HEARINGS**

DISTRICT OF COLUMBIA  
DEPARTMENT OF HEALTH  
Petitioner,

v.

VIRGIE L. TOSTON  
Respondent

Case No.: I-00-20262

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**FINAL ORDER**

**I. Introduction**

This case arises under the Civil Infractions Act of 1985 (D.C. Official Code §§ 2-1801.01 *et seq.*) and Title 21 Chapter 7 of the District of Columbia Municipal Regulations (“DCMR”). By Notice of Infraction (No. 00-20262) served March 5, 2002, the Government charged Respondent Virgie L. Toston with a violation of 21 DCMR 708.10 for allegedly using plastic bags to store and dispose of solid waste other than yard waste.<sup>1</sup> The Notice of Infraction alleged that the violation occurred on March 5, 2002 at 3609 13<sup>th</sup> Street, N.W., and sought a fine of \$50.

On April 1, 2002, Respondent filed an answer of Admit with Explanation pursuant to D.C. Code § 2-1802.02(a)(2). Respondent did not include an explanation with his plea, however. Accordingly, on April 5, 2002, this administrative court issued an order permitting Respondent

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<sup>1</sup> 21 DCMR 708.10 provides: “Plastic bags intended for use as container liners are prohibited for use alone for storing solid waste refuse, except that plastic bags of at least nine (9) mil. thickness with a capacity of no more than thirty-two (32) gallons and securely tied may be used as containers for yard rubbish, provided that bags used for this purpose are marked as yard rubbish and set out for collection on the day(s) designated for yard rubbish collection.”

to file an explanation for the admitted violation, and also permitting the Government to respond to Respondent's answer and explanation, if any.

Respondent subsequently filed an explanation along with a request for a suspension of any fines. Respondent represented that he is "very particular about keeping this area clean, rodent-free and drug-free." Respondent explained that unidentified persons continually leave trash in the rear of his property at 3609 13<sup>th</sup> Street, N.W., as well as at other properties he owns in the neighborhood, and that there is large amount of drug activity in the area. Respondent stated that he has written the Mayor, Chief of Police and his Councilmember about these problems and has made numerous telephone calls, and believes he has suffered retaliation for his efforts from drug dealers who have taken from his properties "at least fifteen trash cans" and performed other acts of vandalism. Respondent represented that he provided keys to his property at 3603 13<sup>th</sup> Street, N.W., and another property to the police for surveillance. In response to Respondent's plea and request, the Government stated that Respondent "should be held accountable for this violation."

Based upon the entire record in this matter, I now make the following findings of fact and conclusions of law:

## **II. Findings of Fact**

1. By his plea of Admit with Explanation, Respondent has admitted violating 21 DCMR 708.10 on March 5, 2002 at 3609 13<sup>th</sup> Street, N.W.
2. On March 5, 2002, Respondent used plastic bags to store and dispose of solid waste other than yard waste at 3609 13<sup>th</sup> Street, N.W.

3. Despite his efforts to keep his property clean and rodent-free, unidentified passersby often leave trash in the rear of Respondent's property at 3609 13<sup>th</sup> Street, N.W., as well as at other properties he owns in the neighborhood. Other unidentified persons, who Respondent believes are drug dealers, have taken "at least fifteen trash cans" and performed other acts of vandalism at his properties.
4. Respondent has written and made numerous telephone calls to various D.C. Government officials about the illegal dumping and drug activity in the area. In addition, Respondent provided keys to his property at 3603 13<sup>th</sup> Street and another property to the police for surveillance.
5. There is no evidence in the record of a history of non-compliance on the part of Respondent.

### **III. Conclusions of Law**

1. Respondent violated 21 DCMR 708.10 on March 5, 2002. A fine of \$50 is authorized for a first violation of this regulation. 16 DCMR §§ 3201.1(d)(1) and 3216.4(e). *See* 48 D.C. Reg. 6656 (July 27, 2001).
2. Respondent has requested a suspension of the authorized fine. While the Government has offered the conclusory recommendation that Respondent be "held accountable" for the violation, such a recommendation can be afforded no evidentiary value in the disposition of this case. *Accord DOH v. M&T Mortgage Corp.*, OAH No. I-00-20272 at 3 n.4 (Final Order, July

10, 2002) (noting “the Government’s conclusory assertion[s], in response to a particularized request for a reduction or suspension of fines and/or statutory penalties that a respondent “should be held accountable” is of insufficient evidentiary or legal value, and, as such, can be given no weight in this administrative court’s determination of the appropriateness of the requested relief”).

3. This administrative court recognizes the extraordinary efforts that Respondent has undertaken to combat the apparent illegal activity occurring on and around his properties. Moreover, this administrative court appreciates Respondent’s frustration with the pace of measurable improvements on this front. While these general efforts are surely to be commended, more particularized efforts than the ones described by Respondent are required to remain in compliance with § 708.10. As this administrative court recently instructed:

As part of the Rodent Control Act of 2000 initiative, the Mayor and the D.C. Council have determined that all of us who live or work in the District of Columbia must be more diligent in the management of our waste in order to effectively address the city’s on-going rodent problem. Plastic trash bags, left on the ground and filled with the scent and promise of household garbage, provide an open invitation for rodents to “feed and breed.” *DOH v. Washington Rehabilitation*, OAH No. I-00-20331 at 3-4 (Final Order, March 12, 2002). Compliance with the requirements of § 708.10 helps to avoid such a result.

*DOH v. Washington*, OAH No. I-00-20330 at 4 (Final Order, May 29, 2002) (footnote omitted).

4. In this case, there is no evidence in the record as to the manner, if any, in which Respondent has attempted to secure the area for the trash generated by his own tenants at the property in question.<sup>2</sup> Without such information, this administrative court is unable to assess how the allegations of illegal activity raised by Respondent might, for purposes of mitigation, explain his admitted use of plastic bags to store and dispose of solid waste other than yard waste. *See* 21 DCMR 708.10; *cf.* Fed. R. Evid. 407 (feasibility of precautionary measures can, if controverted, be established by subsequent remedial measures).
4. Under the facts of this case, therefore, a reduction, although not a suspension, of the fine is appropriate. In light Respondent's efforts to correct the violation of § 708.10, and the lack of evidence in the record of a history on non-compliance, I will reduce the fine to \$25. *See* D.C. Official Code §§ 2-1801.02(a)(2) and 2-1801.03(a)(6); 18 U.S.C. § 3553 .

#### IV. Order

Based upon the foregoing findings of fact and conclusions of law, and the entire record of this case, it is, hereby, this \_\_\_\_ day of \_\_\_\_\_, 2002:

**ORDERED**, that Respondent shall pay a fine in the amount of **TWENTY-FIVE DOLLARS (\$25)** in accordance with the attached instructions within twenty (20) calendar days

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<sup>2</sup> Specifically, there is no evidence in the record as to whether Respondent has attempted to secure in some fashion (*e.g.*, fencing, locking chains, *etc.*) the trash receptacles that he asserts are continually being stolen from his properties.

of the date of mailing of this Order (fifteen (15) calendar days plus five (5) days for service by mail pursuant to D.C. Official Code §§ 2-1802.04 and 2-1802.05); and it is further

**ORDERED**, that, if Respondent fails to pay the above amount in full within twenty (20) calendar days of the date of mailing of this Order, by law, interest must accrue on the unpaid amount at the rate of 1½ % per month or portion thereof, beginning with the date of this Order, pursuant to D.C. Official Code § 2-1802.03(i)(1); and it is further

**ORDERED**, that failure to comply with the attached payment instructions and to remit a payment within the time specified will authorize the imposition of additional sanctions, including the suspension of Respondent's licenses or permits pursuant to D.C. Official Code § 2-1802.03(f), the placement of a lien on real or personal property owned by Respondent pursuant to D.C. Official Code § 2-1802.03(i) and the sealing of Respondent's business premises or work sites pursuant to D.C. Official Code § 2-1801.03(b)(7).

**FILED                      07/31/02**

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Mark D. Poindexter  
Administrative Judge